

NEW APPLICATION



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DOCKETED

APR -7 2009

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VR

Attorneys for Tonto Basin Water Company, Inc.

BEFORE THE ARIZONA CORPORATION COMMISSION

IN THE MATTER OF THE APPLICATION
OF TONTO BASIN WATER COMPANY,
INC. FOR A DECLARATORY ORDER OF
THE ARIZONA CORPORATION
COMMISSION ADJUDICATING THAT
WALTER DUKE IS PROVIDING WATER
UTILITY SERVICES IN GILA COUNTY
ARIZONA AS A PUBLIC SERVICE
CORPORATION

DOCKET NO: W-03515A-09-

W-03515A-09-0175

**APPLICATION FOR
DECLARATORY ORDER**

Tonto Basin Water Company, Inc. ("Tonto Basin" or "Company") hereby submits this Application for a Declaratory Order from the Arizona Corporation Commission ("Commission") finding that Walter Duke, in his sole capacity and/or through separate business corporations, is providing water utility services in portions of Gila County, Arizona, within Tonto Basin's existing certificate of convenience and necessity ("CC&N"). Further, the Company requests that the Commission act on this matter expeditiously due to the potential threat to public health and safety posed by the unregulated provision of water utility service.

BACKGROUND

On December 3, 2008, the Company was notified of a serious water leak at a property located in Tonto Basin, Arizona, owned by Walter Duke. The property location was not listed as a customer of Tonto Basin. Tonto Basin first contacted Mr. Duke by letter dated December 4, 2008, and expressed concern over the discovery of a connected temporary water hose to the water supply line serving the property. A copy of the

1 December 4, 2008 letter to Mr. Duke is attached hereto as Exhibit 1. After considerable
2 investigation, the Company believes the property to be Mr. Duke's private residence, and
3 was being served by a private well owned by Mr. Duke located approximately 3,000 feet
4 away by a transmission main also owned by Mr. Duke. Further investigation revealed that
5 this private well is also the source of water being provided to a motel, public car wash,
6 commercial buildings and numerous rental properties owned by Mr. Duke.

7 On December 15, 2008, Tonto Basin sent Mr. Duke another letter expressing
8 further concern that Mr. Duke was serving other residential and commercial properties
9 located within the Company's CC&N with his private well system. In its letter, the
10 Company requested that the parties meet to resolve the matter. A copy of the December
11 15, 2008 letter is attached hereto as Exhibit 2. The parties did meet and confer on January
12 6, 2009. During the meeting, Mr. Duke claimed that he was authorized to provide water
13 to these residential and commercial properties based on "grandfathered" water rights, but
14 did not provide any evidence to support this claim. A copy of the Company's January 9,
15 2009 letter to Mr. Duke, which memorializes the substance and outcome of the meeting, is
16 attached hereto as Exhibit 3.

17 On February 27, 2009, Tonto Basin informed Mr. Duke by written letter that the
18 Company could no longer ignore the unregulated provision of water service within its
19 CC&N, and that his failure to address or attempt to resolve the issue prior to March 9,
20 2009, would result in Tonto Basin pursuing all legal remedies available to protect the
21 authority granted by the Commission for the Company to be the sole provider of water
22 utility service to the public within its CC&N. A copy of the February 27, 2009 letter is
23 attached hereto as Exhibit 4. To date, Mr. Duke has not responded to Tonto Basin's
24 repeated requests to resolve the matter amicably. Therefore, the Commission's issuance
25 of a Declaratory Order finding that Mr. Duke is acting as a public service corporation in
26 violation of Tonto Basin's CC&N is needed to protect the public interest.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. Determination of a Public Service Corporation – “Serv-Yu” Factors**

3 The Arizona Constitution defines “public service corporation” to include all
4 corporations “furnishing water for irrigation, fire protection, or other public purposes.”
5 Ariz. Const. art. XV, § 2. Although the Company has not been able to determine if Mr.
6 Duke is charging a fee for water use, he is nonetheless “furnishing” water for public
7 purposes by providing it to a motel, commercial buildings and rental properties.¹ In

8 determining whether a business qualifies as a public service corporation, the Commission
9 and courts examine the business in the context of eight factors established in Natural Gas
10 Service Co. v. Serv-Yu Co-op., 70 Ariz. 235, 219 P.2d 324 (Ariz. 1950).

11 In Serv-Yu Co-op., the Supreme Court of Arizona found that a non-profit
12 membership supplying natural gas to its members, was a public service corporation. The
13 court reached this conclusion after examining the following eight factors: (1) what the
14 corporation actually does, (2) a dedication to the public use, (3) articles of incorporation
15 and purposes, (4) dealing with a commodity in which the public holds an interest, (5)
16 monopolizing or intending to monopolize an area, (6) accepting substantially all requests
17 for service, (7) service under contracts and reserving the right to discriminate, and (8)
18 actual or potential competition with other public service corporations. Id. at 237-38, 325-
19 26.

20 In examining these eight factors, the court stated that whether a business is a public
21 utility is determined by the nature of its operations. Id. at 242, 328. The use of certain
22 corporate procedures or curtailment of incidental corporate functions cannot be used to
23 avoid regulation. Id. at 242, 329. Thus, using contracts or reserving the right to
24

25 ¹ In Arizona Corp. Comm’n. v. Nicholson, 108 Ariz. 317, 497 P.2d 815 (Ariz. 1972),
26 the court stated that a public service corporation need not be a corporation, but can be any
 form of ownership, including individual persons. 108 Ariz. at 319, 497 P.2d at 817.

1 discriminate is not controlling. Id. at 238, 326. Other factors that are not conclusive
2 include failing to have articles of incorporation or stated purposes or making statements
3 that the business it not holding itself out as serving the public in the articles of
4 incorporation or purpose clause. Id. at 236, 242, 326, 328. Even if a business never holds
5 itself out as ready to serve the general public or does not have a public element to its
6 purpose clause, the business still may be public. Id. at 241, 328. What the business
7 actually does will determine whether the business has the element of a public utility. Id.

8 Based on these considerations, the court concluded that the Serv-Yu Cooperative ("Serv-
9 Yu") could not avoid regulation solely by incorporating as a non-profit membership, using
10 private contracts or having a stated purpose of serving only members. Id. at 242, 329.
11 Looking at these factors alone would make it too easy for a business to evade the law. Id.
12 at 242, 329. Rather, the court also looked at what Serv-Yu actually did or proposed to do
13 as a business.

14 An important factor in determining a business' nature of operation is what it
15 actually does or proposes to do as a business. Id. at 240, 327. The character and extent of
16 a business make it public and if its service is a public one, the rates set by that business are
17 subject to regulation. Id. at 241, 328. *The character of a business includes whether it*
18 *dedicates itself to a public use, provides a public service, or deals with a commodity in*
19 *which the public had an interest.* Id. at 238, 326. A dedication to public use is always a
20 question of intention, and a business owner "must at least have undertaken to actually
21 engaged in business and supply at least some of his commodity to the public." Id. The
22 public must have a general interest in the supply of this commodity. Id. at 239, 326.

23 The extent of the business includes reviewing that portion of the public who is
24 served by the business. The public does not mean everybody all the time. Id. at 240, 327.
25 Rather, it means serving such a *substantial part of the public as to make its rates and*
26 *operations a matter of public concern*, thus subjecting the business to regulation. Id. at

1 242, 328. A business need not hold itself out explicitly as serving the public, but may
2 hold itself out impliedly, as by wide solicitation or acceptance of customers. Id. at 239,
3 327. The extent of the business also includes the business' actual or potential competition
4 with other certified public service corporations. Id. at 241, 328. If competition was not
5 considered, a business could compete with bona fide utilities until the entire state is
6 honeycombed, making public regulation a sham and delusion. Id. Based on these factors,
7 the court disregarded Serv-Yu's argument that it only served its members, not the general
8 public. The court concluded that Serv-Yu served a substantial portion of the public
9 because its membership was open to anyone who applied and paid the fees. Id. at 240,
10 327. Effectively anyone could become a member of Serv-Yu, thus it was open to serving
11 the public. Id. at 242, 329. Serv-Yu's open membership also meant it competed with the
12 certified public service corporation already in the field to the financial detriment of that
13 corporation. Id. Serv-Yu was attempting to secure a monopoly of a lucrative business
14 given that its purpose was to eliminate the competing utility and had an open membership.
15 Id. at 240, 242, 327, 329. Based on these considerations, the court concluded that Serv-Yu
16 was a public service corporation.

17 **II. Mr. Duke is Acting Like a Public Service Corporation.**

18 Mr. Duke supplies water, a commodity in which the public is interested, to
19 commercial businesses and rental properties. Those businesses are open to and used by
20 the general public, and thus dedicated to a public purpose. Additionally, Mr. Duke serves
21 a substantial portion of the public as he accepts any customer who can pay the car wash or
22 motel fees. He also rents his properties to members of the public who apply and can pay
23 the rental fee. By supplying water to the public Mr. Duke competes with Tonto Basin, a
24 public service corporation which holds a CC&N for the area Mr. Duke is serving. By
25 following Mr. Duke's example, other parties could operate within Tonto's CC&N and
26 avoid regulation.

1 Given that Mr. Duke supplies water to the general public, his system should be a
2 matter of public concern and subject to regulation. Certainly, people who are guest of the
3 motel, work in the commercial buildings or reside in the rental properties owned by Mr.
4 Duke, in his personal capacity or through a corporate entity, drink the water being
5 provided. Permitting Mr. Duke to supply water to his businesses and the public without
6 regulation undermines the purpose of granting a CC&N to Tonto Basin. It is well
7 established that Arizona's public policy respecting public service corporations prefers a
8 regulated monopoly over free-wheeling competition. James P. Paul Water Co. v. Arizona
9 Corp. Comm'n, 137 Ariz. 426, 429, 671 P.2d 404, 407 (Ariz.,1983). Once granted, a
10 CC&N confers upon its holder an exclusive right to provide the relevant service for as
11 long as the grantee can provide adequate service at a reasonable rate. Id. If a CC&N
12 within Arizona's system of regulated monopoly means anything, it means that its holder
13 has the right to an opportunity to adequately provide the service it was certified to
14 provide. Id. Tonto Basin's ability to adequately provide water service to its CC&N area
15 is compromised by Mr. Duke's actions, which may result in increased costs to the
16 Company's customers (in the long run) and interfere with its ability to provide service at a
17 reasonable rate.

18 Under A.R.S. § 49-352, a "public water system" is a water system that (1) provides
19 water for human consumption through pipes or other constructed conveyances; and (2)
20 has at least fifteen service connections or regularly serves an average of at least twenty-
21 five persons daily for at least sixty days of a year. Mr. Duke's water supply system would
22 likely qualify as a public water system because it provides water for human consumption
23 through pipes. Additionally, the system most likely supplies at least twenty-five people
24 daily for at least sixty days of a year among the individuals residing in the private
25 residential rental properties, as well as the customers utilizing the motel and carwash. The
26 Company expects to confirm this allegation pursuant to discovery.

1 If Mr. Duke's water system qualifies as a public water system, it becomes subject
2 to the Safe Drinking Water Act regulations ("SDWA") of ADEQ. A.A.C. R18-4-101 et
3 seq. These regulations impose a variety of requirements on public water systems. For
4 example, a public water system must sample and analyze its water for coliform, turbidity,
5 inorganic chemical, organic chemicals, and radioactivity. A.A.C. R18-4-105. The public
6 water system must then report the results of its analyses to ADEQ for each monitoring
7 period. A.A.C. R18-4-106. Additional regulatory requirements for public water systems
8 pertain to record retention, filtration, disinfection, treatment techniques, sanitary surveys,
9 and inspection of the facility. A. C. R18-4-101 et seq. Mr. Duke has provided no
10 evidence to the Company that he samples or analyzes the water he supplies to his various
11 businesses in accordance with ADEQ regulations. Mr. Duke also failed to provide any
12 evidence that he has complied with various other requirements imposed on public water
13 systems under the SDWA.

14 **III. Certain Arizona Case Law Can Be Distinguished Based on the Facts.**

15 Mr. Duke might attempt to rely on two Arizona cases that applied the eight factors
16 in Serv-Yu Co-op. to argue that he should not qualify as a public service corporation.
17 These cases, however, can be distinguished based on unique facts and circumstances.

18 **A. Arizona Corp. Comm'n v. Nicholson**

19 In Arizona Corp. Comm'n v. Nicholson, 108 Ariz. 317, 497 P.2d 815 (Ariz. 1972),
20 the Arizona Supreme Court held that furnishing water to the tenants of a trailer park did
21 not make the owners of the trailer park a public service corporation subject to the
22 jurisdiction of the ACC. The court explained that the owners were not in the business of
23 supplying water, but were in the sole business of renting trailer spaces. Id. at 320, 818.
24 Furnishing water was in support of and incidental to the plaintiffs' primary business of
25 renting trailer spaces. Id. Furthermore, the park was not open to entire public because the
26 owners had discretionary restrictions based on compatibility with other tenants, trailer size

1 and trailer make. Id. at 322, 820.

2 In contrast to the park owners in Nicholson, Mr. Duke is not supplying a single
3 business, but is supplying several businesses, including a car wash, rental properties and a
4 motel. Mr. Duke might retain the same discretionary restrictions over his customers as
5 those retained by owners in Nicholson. Nonetheless, he provides water to any customer
6 who can pay the motel, car wash or rental fees, thus providing the general public with
7 water. Also, Mr. Duke's motel business involves a high turnover of transient customers,
8 and over time he provides drinking water to a large portion of the general public.

9 **B. *Arizona Water Co. v. Arizona Corp. Comm'n***

10 In Arizona Water Co. v. Arizona Corp. Comm'n, 161 Ariz. 389, 778 P.2d 1285
11 (Ariz. Ct. App. 1989), the Arizona Court of Appeals found that the seven couples owning
12 a well were not a public service corporation when they provided water to themselves and
13 two non-owners. The court explained that the well owners had not formed a corporation,
14 did not attempt to monopolize water service in an area, and did not compete with the other
15 water provider in the area. Id. at 391, 1287. The well owners also provided water for
16 essentially domestic purposes, did not solicit new customers, and refused all requests for
17 service from the well. Id. Based on these factors, the court concluded that there is not
18 evidence that the well-owners were engaged in a sham to evade regulation. Id. at 392,
19 1288.

20 In contrast to the defendants in Arizona Water Co., Mr. Duke is not supplying
21 water for solely domestic purposes, but is supplying water for predominately commercial
22 purposes at several businesses that themselves serve the general public. The high turnover
23 of motel and car wash customers results in a large portion of the public being provided
24 with water by Mr. Duke, compared to the seven couples and two non-owners supplied
25 with water in Arizona Water Co. Additionally, during the January 6, 2009 meeting with
26 Robert Hardcastle, Mr. Duke admitted that the purpose of using his own water system is

1 to avoid paying the costs of being supplied by Tonto Basin, thereby expressing a desire to
2 avoid rates set by the Commission.

3 Based on the facts as alleged herein, it is clear that Mr. Duke is acting as a public
4 service corporation in violation of Arizona law, and Commission rules and regulations
5 covering the provision of private water utility service, to the detriment of Tonto Basin and
6 its customers. Furthermore, Mr. Duke has not produced any evidence to the Company
7 that his water system meets the requirements of the SDWA, and therefore may represent a
8 threat to the health and safety of the general public.

9 **RELIEF REQUESTED**

10 Based on the foregoing, Tonto Basin respectfully requests the following:

11 A. That the Commission consider this Application on an expedited basis,
12 including the scheduling of a hearing on this matter as soon as practicable;

13 B. That the Commission enter a Declaratory Order finding that Walter Duke, in
14 his sole capacity and/or through one or more corporate entities, is furnishing water for
15 public purposes as a public service corporation;


16 C. That the Commission find Walter Duke in violation of laws and regulations
17 governing public service corporation, and to immediately cease and desist from furnishing
18 water to the general public within Tonto Basin's CC&N service area; and

19 D. Any further action or relief the Commission deems necessary to protect the
20 public interest.

1 RESPECTFULLY SUBMITTED this 7th day of April, 2009.

2 FENNEMORE CRAIG, P.C.

3
4 By


Patrick J. Black
Stephanie V. Johnson
3003 North Central Avenue, Suite 2600
Phoenix, Arizona 85012
Attorneys for Tonto Basin Water Company,
Inc.

8
9 **ORIGINAL** and thirteen (13) copies
10 of the foregoing filed this 7th day of April, 2009, with:

11 Docket Control
12 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

13 **Copy of the foregoing hand delivered**
14 this 7th day of April, 2009 to:

15 Chairman Kristin K. Mayes
16 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

17 Commissioner Gary Pierce
18 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

19 Commissioner Paul Newman
20 Arizona Corporation Commission
1200 West Washington Street
21 Phoenix, Arizona 85007

22 Commissioner Sandra D. Kennedy
23 Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

24 Commissioner Bob Stump
25 Arizona Corporation Commission
1200 West Washington Street
26 Phoenix, Arizona 85007

Ernest Johnson, Director
Utilities Division
Arizona Corporation Commission
1200 West Washington Street
Phoenix, Arizona 85007

Walter Duke
P.O. Box 299
Tonto Basin, Arizona 85553-0299

By E. N. Reed

2183203/91392.001

EXHIBIT

1

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Service Center • (800) 270-6084

ROBERT T. HARDCASTLE
Fax (781) 823-3070
RTH@brookeutilities.com

December 4, 2008

Walter Duke
P.O. Box 299
Tonto Basin, AZ 85553-0299

Re: **Illegal Water Connection, Earl Dr., Tonto Basin, AZ**

Dear Mr. Duke,

On December 3, 2008 we were notified of a serious water leak at the property referenced above for which we have determined you are the owner. This property location is not a current customer of Tonto Basin Water Co.

Our investigation of this matter determined that closure of the water supply main to this area caused the visible water leak to immediately cease. Further investigation of this condition revealed a temporary appliance hose connecting a water supply line to the property residence. Numerous photographs were taken of this condition as evidence of our findings.

Under Arizona's utility theft statute, A.R.S. § 40-492 (A)(4), a party is liable for unauthorized water use if it "uses or receives the utility services without authorization or consent of the utility and knows of the unlawful diversion, tampering, or connection" of the utility. In the instant case we estimate that not less than 20,000 gallons of water were involved in the observed leak. Any amount of water previously illegally distributed as a result of this connection is being investigated but has not been determined. We are also aware that you own other properties in the area for which only one authorized water utility account has been established. In the course of this investigation we will consider all of these other properties determining whether or not a similar condition exists. We will be notifying local law enforcement authorities of this condition as well.

Our purpose is not to prosecute individuals for unauthorized water utility usage unless forced to do so. However, we cannot, and will not, permit unauthorized use of our water utility services without appropriate compensation of all usage in accordance with regulatorily established rates. I am interested in discussing this matter with you at your earliest convenience. Please call me at (661) 633-7526 for this purpose and assist us in fully understanding the scope of this matter and hopefully avoid more serious remedies available to us.

I look forward to your call.

*Brooke Water L.L.C. Circle City Water Co. L.L.C. Strawberry Water Co., Inc. Pine Water Co., Inc.
Payson Water Co., Inc. Navajo Water Co., Inc. Tonto Basin Water Co., Inc.*

Walter Duke
Tonto Basin, AZ
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Hardcastle", with a stylized, sweeping flourish at the end.

Robert T. Hardcastle
President

cc: RTH correspondence file
DA, MJ, KS, MB
JS Esq.

EXHIBIT

2

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Service Center • (800) 270-6084

ROBERT T. HARDCASTLE
Fax (781) 823-3070
RTH@brookeutilities.com

December 15, 2008

Walter Duke
P.O. Box 299
Tonto Basin, AZ 85553-0299

Re: **Illegal Water Connection, Tonto Basin, AZ**

Dear Mr. Duke,

On December 4, 2008 I previously wrote to you expressing our concern about an apparent illegal connection on your Earl Dr. property in Tonto Basin. I asked for your cooperation in contacting me to discuss this situation and, hopefully, arrive at an amicable situation. To date you have not done so. I am writing you, again, to urge your cooperation before we must proceed with other remedies.

Even now more concerning is that we have completed our follow-up preliminary investigation of your other properties in Tonto Basin including a motel, car wash, and numerous rental property units. We have determined that we do not serve any of these properties but water service is obviously connected in all cases. Of course, we are interested in the source of this water supply, water quality standards, testing, monitoring, and whether or not all the other requirements of public water service are being met.

As I said before, Mr. Duke, our purpose is not to prosecute individuals for unauthorized water utility usage unless forced to do so. However, we cannot, and will not, permit unauthorized use of our water utility services without appropriate compensation of all usage in accordance with regulatorily established rates. There are other potentially serious issues related to water quality, testing, and monitoring as well. We must alert the Arizona Department of Environmental Quality in the very near future as to these issues if we cannot come to some immediate arrangement. Again, I urge you or your attorney to discuss this matter with me. Please call me at (661) 633-7526 immediately.

Walter Duke
Tonto Basin, AZ
Page 2

Sincerely,

A handwritten signature in black ink, appearing to read "Robert T. Hardcastle", with a stylized, sweeping flourish at the end.

Robert T. Hardcastle
President

cc: RTH correspondence file
DA, MJ, KS, MB
JS Esq.

EXHIBIT

3

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Service Center • (800) 270-6084

ROBERT T. HARDCASTLE
Fax (781) 823-3070
RTH@brookeutilities.com

January 9, 2009

Walter Duke
P.O. Box 299
Tonto Basin, AZ 85553-0299

Re: **Illegal Water Connection, Tonto Basin, AZ**

Dear Mr. Duke,

On Tuesday, January 6, 2009 at approximately 2:30 p.m. MST, I discussed the issue of several possible illegal water connections in the Tonto Basin, AZ area which was the subject of my two previous December 2008 letters to you. You acknowledged receipt of these letters but have not replied, as requested, to either letter.

During our January 6 meeting I expressed my concern that you were moving private water from a water source, later confirmed to be almost 3,000 feet away, from property not known to be owned by you, across other private property and under an Arizona State Highway to multiple commercial and residential facilities also owned by you. I requested you to abandon these unauthorized water connections as they exist within the boundaries of Tonto Basin Water Co.'s ("TBWCo") Certificate of Convenience and Necessity as legally authorized by the Arizona Corporation Commission. During this meeting you acknowledged that you were not connected to TBWCo's water system because (a) special "grandfathered" rights were previously granted to you that precluded you from connecting to the local water utility, and (b) because you "couldn't afford it". I requested you provide evidence of your special rights and you replied that you were not sure where they were located or if they existed. In conclusion, during our meeting, I requested your cooperation in connecting to TBWCo's water system. Again, you refused. I explained that I could not ignore this situation and would, if necessary, pursue any means legally available to resolve this matter.

As a further courtesy, I am extending my offer again to this extent: provide to my office any documents evidencing your special water distribution rights to the commercial and residential properties in question by not later than January 27, 2009. If this documentation is not provided as described herein I will immediately pursue all legal remedies available to me through all Arizona regulatory and civil means necessary to terminate your service from your existing source and require your compliance with the water utility regulatory requirements in this area.

I look forward to hearing from you and your cooperation.

*Brooke Water L.L.C. Circle City Water Co. L.L.C. Strawberry Water Co., Inc. Pine Water Co., Inc.
Payson Water Co., Inc. Navajo Water Co., Inc. Tonto Basin Water Co., Inc.*

Walter Duke
January 9, 2009
Page 2

Sincerely,



Robert T. Hardcastle
President

cc: RTH correspondence file
DA, MJ, KS, MB
JS Esq.
TW, ESq.
SO, ACC
ADEQ
ADWR

EXHIBIT

4

Brooke Utilities, Inc.

P. O. Box 82218 • Bakersfield, California 93380-2218
Customer Service Center • (800) 270-6084

ROBERT T. HARDCASTLE
Fax (781) 823-3070
RTH@brookeutilities.com

February 27, 2009

Certified Registered Mail No. 7007 2560 0001 5492 5856

Walter Duke
P.O. Box 299
Tonto Basin, AZ 85553-0299

Re: **Water Connection, Tonto Basin, AZ**

Dear Mr. Duke,

I have written you numerous previous letters concerning your supplying water to various public locations in Tonto Basin, AZ. As I said I would, I have completed my legal research and investigation. I have also concluded my effort with various regulatory authorities having jurisdiction in these matters. I am convinced that your conduct as a public service corporation in the unregulated water utility service within our exclusive service area is unacceptable.

Further, I am hereby advising you that my previous generous offer to settle this matter by your proper connection to our local water system is rescinded and will not be offered again. This matter must be resolved inclusive of any damages related to your historical improper public service corporation conduct and distribution of water.

I am ready to proceed. This matter is not complicated. If you're represented by counsel please advise of his contact information so that we can begin a legal dialog in resolution of this matter. Otherwise, if we are unable to satisfactorily resolve this issue by not later than March 9, 2009 I will proceed with all legal and regulatory remedies available to me.

Please contact me at your earliest opportunity.

Sincerely,

Robert T. Hardcastle
President

cc: RTH correspondence file
DA, MJ, KS, MB
JS Esq.
PB, Esq.

*Brooke Water L.L.C. Circle City Water Co. L.L.C. Strawberry Water Co., Inc. Pine Water Co., Inc.
Payson Water Co., Inc. Navajo Water Co., Inc. Tonto Basin Water Co., Inc.*